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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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*DA*

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[REDACTED]

File: LIN-02-048-53461 Office: NEBRASKA SERVICE CENTER Date:

JUL 29 2003

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner specializes in manufacturing dental prostheses for dentists and prosthodontists in both Kansas and Missouri. It has eleven employees and a gross annual income of \$748,500. It seeks to employ the beneficiary as a dental technology specialist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner's president submits additional information.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, or that the beneficiary's education, specialized training, and/or employment experience are equivalent to a baccalaureate degree. On appeal, the petitioner's president states, in part, that another technician was granted an H-1B visa under the same circumstances as the beneficiary's. He further states that the duties of a dental technician who works with prosthodontists are more complex than the duties of a regular dental technician.

The petitioner's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As Dental Technology Specialist, [the beneficiary] will be responsible for ceramic restorations and testing of new varieties of ceramic material. His vast background in ceramic restorations will enable him to contribute to the development of [the petitioner's] high quality ceramic products and state of art cosmetic dentistry. Additionally, [the beneficiary] will work to provide dental laboratory research on advanced dental technology to further enhance the design and future development of dental cosmetic products for [the petitioner].

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with the petitioner's assertion that the proffered position would normally require a bachelor's degree in dental laboratory sciences or an equivalent thereof. The proffered position is similar to that of a dental laboratory technician. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 548, the Department of Labor (DOL) describes the position of dental laboratory technician, in part, as follows:

In some laboratories, technicians perform all stages of the work, whereas in other labs, each technician does only a few. Dental laboratory technicians can specialize in one of five areas: Orthodontic appliances, crowns and bridges, complete dentures, partial dentures, or ceramics. Job titles can reflect specialization in these areas. For example, technicians who make porcelain and acrylic restorations are called *dental ceramists*.

In its *Handbook* at page 549, the DOL finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a dental laboratory technician. Most technicians learn their craft on the job. Training in dental laboratory technology is also available through junior and community colleges, vocational-technical institutes, and the Armed Forces. In 2000, 30 programs in dental laboratory technology were accredited by the Commission on Dental Accreditation in conjunction with the American Dental Association (ADA). Such programs normally take 2 years to complete and lead to an associate degree. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner states that a similar petition was approved for one of its technicians in the past, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record contains a letter from Dr. [REDACTED] Director Graduate Prosthodontics, School of Dentistry, University of Missouri - Kansas City, who states, in part, that positions such as the proffered position require a bachelor's degree in dental laboratory technology. The writer has not, however, provided evidence in support of his assertion. It is noted that Dr. [REDACTED] states that he prefers rather than requires a degree for his research laboratory technicians. He does not indicate the number or percentage of dental technology specialists in laboratories such as the petitioner's who hold such degrees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.